

Exhibit A

(This exhibit contains verbatim reproductions of the Requests for Production and Interrogatories referenced in MBS's Motion to Compel Discovery, and relevant definitions)

Relevant Definitions

“Plaintiff”: Energizer Brands, LLC, and any of its divisions, subsidiaries, and affiliates, and its agents, servants, employees, representatives, officers, directors, accountants, attorneys, persons or entities under its control, or acting or purporting to act on its behalf.

“Defendant”: My Battery Supplier, LLC.

“Energizer Marks”: The Energizer Marks referenced in Plaintiff’s First Amended Complaint (ECF No. 29 ¶ 21) filed in this Action, including U.S. Trademark Serial No. 78697159, and any marks subsequently asserted by any of the Plaintiffs in this Action.

“Energizer Products” (Per the Parties’ meet and confer discussions): Any product that includes batteries marketed or sold under the Energizer Marks

“OEM Batteries”: Any battery bearing one or more Energizer Marks and labelled “Not for Retail Trade” or containing a similar designation

“bulk-packaged batteries” (Per the Parties’ meet and confer discussions): Batteries other than those packaged in blister packs

“Accused Products”: Any product offered for sale or sold by Defendant that Plaintiff contends infringes one or more of the Energizer Marks.

“Authorized Reseller”: The Authorized Resellers referenced in Plaintiff’s First Amended Complaint. (See, e.g., ECF No. 29 ¶ 11).

“Amazon”: Amazon.com, Inc., and any of its divisions, subsidiaries, and affiliates, and its agents, servants, employees, representatives, officers, directors, accountants, attorneys, persons or entities under its control, or acting or purporting to act on its behalf.

Category #1 (Energizer's Customers, Sales and Product Packaging)¹

- RFP No. 9: Documents sufficient to show the total gross revenues and net profits generated from all sales of OEM Batteries, including all relevant accounting records.
- RFP No. 10: Documents sufficient to show the total gross revenues and net profits generated from all sales of bulk-packaged Energizer Products, including all relevant accounting records.
- RFP No. 13: Documents sufficient to identify each of Plaintiff's direct customers of OEM Batteries.
- RFP No. 14: Documents sufficient to identify each of Plaintiff's direct customers of bulk-packaged Energizer Products or bulk-packaged products bearing marks other than the Energizer marks.
- RFP No. 15: All agreements and contracts between Plaintiff and Plaintiff's direct customers of OEM Batteries and bulk-packaged Energizer Products.
- RFP No. 16: Each agreement to which Plaintiff is a party concerning the distribution or sale of OEM Batteries or bulk-packaged Energizer Products.
- RFP No. 17: All documents and communications concerning the packaging or repackaging of Energizer Products, including all agreements between Plaintiff and any third-party.
- RFP No. 27: All agreements between Plaintiff and any other person, whereby either Plaintiff or said person was granted the right to or was prohibited from manufacturing, advertising, distributing, offering for sale or selling goods or services under the Energizer marks, including manufacturing agreements, distribution agreements, license agreements, settlement agreements, consent agreements and coexistence agreements.

Interrogatory No. 1: Identify each direct customer of Energizer Products, between 2013 and the Present, and, for each, state whether they are an Authorized Reseller.

Interrogatory No. 2: Identify each instance, between 2013 and the Present, in which Plaintiff has sold OEM Batteries or bulk-packaged batteries, including identifying the product Plaintiff sold (by UPC or other product designation), the quantity Plaintiff sold, the date Plaintiff sold it, and to whom Plaintiff sold it.

¹ By way of separate communication between counsel, MBS clarified that the discovery requests listed in Category #s 1–3 and 5 seek information from November 15, 2013 (i.e., six years prior to the filing of this Action) through the present.

Category #2 (Packaging of Combination Battery Products and Non-Energizer Products)

- RFP No. 1: Documents sufficient to identify each Energizer Product distributed or sold in the United States bearing, using, or embodying the Energizer Marks.
- RFP No. 2: A representative sample of each Energizer Product distributed or sold by Plaintiff in the United States, including the packaging in which it is distributed or sold.
- RFP No. 7: Documents sufficient to identify each bulk-packaged product distributed or sold by Plaintiff in the United States, including batteries bearing marks other than the Energizer Marks.
- RFP No. 8: A representative sample of each bulk-packaged battery product distributed or sold by Plaintiff in the United States, including batteries bearing marks other than the Energizer marks, with each sample including the packaging in which it is distributed or sold.

Category #3 (Marketing Studies and Customer Base of Energizer Products)

- RFP No. 18: All documents concerning advertising, marketing and promotion of OEM Batteries and bulk-packaged Energizer Products, including all solicitations, customer correspondence, sales sheets, price lists, product offers, promotional materials, and advertisements using the Energizer marks.
- RFP No. 24: Documents sufficient to show the channels of trade of OEM Batteries and bulk-packaged Energizer Products, including customer lists and sales records, and any retail stores and online websites where such products are or were intended to be sold or offered for sale.
- RFP No. 25: Documents sufficient to identify the retail customer base of products sold under the Energizer marks, including market studies, marketing materials, business plans, memoranda, internal communications, and surveys.
- RFP No. 26: All business proposals, business plans, marketing plans, advertising plans, and advertising campaigns concerning products sold or provided, or intended to be sold or provided, under the Energizer marks.

Category #4 (Energizer's Knowledge of MBS)²

- RFP No. 11: All documents concerning Plaintiff's attempts to purchase, and purchases of, Energizer Products from Defendant.
- RFP No. 12: All documents concerning Plaintiff's offer to sell, or sale of, products to Defendant, including all offers to sell bulk products to Defendant.

² MBS clarified that the requests listed in Category # 4 seek information from January 2009 through the present.

RFP No. 19: All documents and things concerning Defendant, including any investigative report, evaluation, inspection, analysis, testing or comparison involving the Accused Products.

RFP No. 20: All communications between Plaintiff and one or more third-parties regarding Defendant.

RFP No. 23: All documents concerning Plaintiff's knowledge of the Accused Products and when that knowledge began, including correspondence with third parties, internal communications, and memoranda.

Interrogatory No. 3: State when Plaintiff first became aware of Defendant's offering for sale or sale of Energizer Products, including: (1) the employees or agents of Plaintiff who became aware; (2) the specific Energizer Products that Plaintiff believed were being offered for sale or sold by Defendant; and (3) all actions taken by Plaintiff in response.

Category #5 (Energizer's Enforcement Efforts)

RFP No. 28: All documents concerning enforcement of the Energizer marks by Plaintiff notice letters, watch services, litigations and proceedings before the Trademark Trial and Appeal Board.

RFP No. 29: A copy of each letter or message concerning the Energizer marks sent by Plaintiff to any Amazon seller.

Interrogatory No. 4: State when Plaintiff first became aware that OEM Batteries were being offered for sale, or sold, on online marketplaces (e.g., Amazon, eBay, Walmart marketplace), including: (1) the employees or agents of Plaintiff who became aware; (2) the specific product that Plaintiff believed was being offered for sale or sold; and (3) all actions taken by Plaintiff in response.

Interrogatory No. 5: State when Plaintiff first became aware that bulk-packaged batteries were being offered for sale, or sold, on online marketplaces (e.g., Amazon, eBay, Walmart marketplace), including: (1) the employees or agents of Plaintiff who became aware; (2) the specific product that Plaintiff believed was being offered for sale or sold; and (3) all actions taken by Plaintiff in response.